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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1952.

No. 225

THE PEOPLE OF THE STATE OF ILLINOIS ex rel ANGELO TARRANTO,

Petitioner,

vs.

JOHN E. BABB, Sheriff,

Respondent.

PETITION FOR WRIT OF CERTIORARI AND BRIEF IN SUPPORT THEREOF TO THE SUPREME COURT OF ILLINOIS.

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To The Honorable Fred M. Vinson, Chief Justice, and the Associate Justices of the Supreme Court of the United States:

Your petitioner, The People Of The State Of Illinois, *ex rel* Angelo Tarranto (Tarranto being sometimes hereinafter referred to as "Relator") respectfully prays this Honorable Court to issue its writ of certiorari to review that judgment of the Supreme Court of Illinois, rendered March 20, 1952, in the cause entitled *The People of the State of Illinois, ex rel Angelo Tarranto* v. *John E. Babb, Sheriff*, numbered 32055, which judgment affirmed an order of the Criminal Court of Cook County quashing the petition of the Relator for a writ of *habeas corpus* and remanded him to the custody of the respondent.

Summary and Short Statement of the Matter Involved.

The Relator was arrested by Illinois authorities on July 7, 1950 as a fugitive from justice of the State of New York and a fugitive warrant was issued against him at the request of the New York authorities. On July 10, 1950 he duly requested a hearing before the Governor of Illinois for the purpose of objecting to the issuance of a warrant for his return to the demanding jurisdiction, and a hearing was set for August 21, 1950. This hearing was continued from time to time until October 10, 1950, when the Governor of Illinois issued his warrant directing the Relator's return to New York.

On July 24, 1950, a petition for a writ of *habeas corpus* was filed on behalf of the relator, and the proceedings thereon were continued from time to time thereafter. On December 13, 1950, over six months after the arrest of the Relator, an amended petition for a writ of *habeas corpus* was filed by him, urging as an additional basis for an order for his discharge from custody, that no agent of the demanding jurisdiction of New York had appeared in the demanded jurisdiction of Illinois within thirty days from the time of the arrest of the Relator as required by Section 3182 of Title 18, United States Code Annotated (June 25, 1948, C. 645, 62 Stat. 822) of the United States Code. The fact of the want of such timely appearance of a New York agent was stipulated at the hearing upon the petition for the writ of *habeas corpus* held on January 10, 1951, which hearing resulted in the order quashing the petition for writ and remanding the Relator to the custody of the Respondent.

Statement of the basis upon which it is contended that this Court has jurisdiction to review the judgment in question.

The jurisdiction of this Court is invoked pursuant to the provisions of Section 646 (3) of the Judicial Code, June 25, 1946, 62 Statutes 928, 28 United States Code Annotated, Section 1257 (3).

That statute provides that final judgments rendered by the highest Court of a State in which a decision could be had, (in this instance, the Supreme Court of the State of Illinois) may be reviewed by this Court:

> "(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State Statute is drawn in question by reason of it being repugnant to the Constitution, treaties or laws of the United States or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States. June 25, 1948, C. 646, 62 Stat. 929."

It is claimed that the judgment of the Supreme Court of Illinois denied the Relator his rights under the provisions of 18 United States Code Annotated, Section 3182, June 25, 1948, C.645, 62 Stat. 822, the pertinent provisions of which statute of the United States are:

> "* * * If no such agent (agent of the executive authority of a state making a demand for a fugitive from justice) appears within thirty days from the time of arrest, the prisoner may be discharged."

Date of Judgment Sought to Be Reviewed.

The judgment of the Supreme Court of Illinois sought to be reviewed was rendered March 20, 1952 and is reported as *The People ex rel. Angelo Tarranto, Appellant*

v. *John E. Babb, Sheriff, Appellee,* 412 Ill. 123. A petition for rehearing was duly filed and subsequently denied by the Supreme Court of Illinois on May 19, 1952. On May 27, 1952 the Supreme Court of Illinois stayed the mandate of that court pending disposition of this petition.

The Question Presented.

The question presented is whether under the United States Statutes in question (18 United States Code Annotated, Section 3182, June 25, 1948, C. 645, 62 Stat. 822) the relator is entitled to be discharged because no agent of the demanding state appeared to receive him within thirty days from the date of his arrest.

Statement of the Reason Relied On for The Allowance of the Writ.

The petitioner maintains that the Supreme Court of Illinois, in affirming the order of the Criminal Court of Cook County has denied the Relator rights accorded him under a Statute of the United States and has so construed such statute as to deprive it of its clear and obvious meaning and so as to thwart the liberal intent of the Congress.

Prayer.

Wherefore, the petitioner prays that a Writ of Certiorari be issued out of and under the Seal of this Honorable Court directed to the Supreme Court of Illinois demanding that Court to certify and send to this Court a full and complete transcript of the record and of the proceedings in said court in the cause therein numbered and entitled on its docket as No. 32055, *The People of the*

State of Illinois, ex rel Angelo Tarranto, Appellant, v. *John E. Babb, Sheriff, Appellee,* to the end that this cause may be reviewed and determined by this Court as provided by the Statutes of the United States; and that said judgment of the Supreme Court of Illinois may be reversed by this Court, and for such further relief as to this Court may seem proper.

Dated: July 21, 1952.

THOMAS F. DOLAN,
of Chicago, Illinois,
Attorney for the Petitioner

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THE PEOPLE OF THE STATE OF ILLINOIS ex rel ANGELO TARRANTO,

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Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

Opinion of Court Below.

The opinion of the Supreme Court of Illinois (Rec. 6) is reported in 412 Ill. 123.

II.

Grounds on which Jurisdiction of This Court Is Invoked.

Jurisdiction of this Court is invoked pursuant to the provisions of Section 646 (3) of the Judicial Code, June 25, 1948, 62 Statutes 929, 28 United States Code Annotated, 1257 (3) as set forth in the Petition for Certiorari filed herewith. (Petition for Certiorari, p. 3)

III.

Statement of the Case.

The Court is respectfully referred to "Summary and Short Statement of the Matter Involved" as set forth in the Petition for Certiorari filed herewith. (Petition for Certiorari, p. 2)

Errors Intended to Be Urged.

The Court is respectfully referred to "Statement of the Reasons Relied on for the Allowance of the Writ" as set forth in the Petition for Certiorari filed herewith. (Petition for Certiorari, p. 4)

Summary of Argument.

The Court misconstrued the construction of the Federal extradition statute U. S. Code, Title 18, Section 3182: F.C.A. 18, Section 3182. The act provides, "If no such agent appears within thirty days from the time of the *arrest*, the prisoner may be discharged."

VI.

ARGUMENT.

It is respectfully submitted that the Supreme Court of the State of Illinois misconstrued the construction of the Federal Extradition Statute U. S. Code, Title 18, Section 3182; F.C.A. 18, Section 3182. The Act provides, "If no such agent appears within thirty days from the time of the arrest, the prisoner may be discharged."

The Court will note that the statute requires that the agent appear within thirty days after the arrest, not thirty days after the extradition proceedings were terminated. If Congress intended that the agent need not appear until the conclusion of the hearing on the extradition proceedings the wording of the statute would have read that the agent shall appear within thirty days from the adjudication of the extradition proceedings. The statute must be strictly construed in favor of the relator. It must be assumed that the law makers knew that a person arrested on a fugitive warrant had the right to apply for a writ of *habeas corpus* to determine the legality of the extradition proceedings. The purpose of the statute in requiring the appearance of the agent within thirty days of the arrest was (1) to prevent the indefinite incarceration of a person sought to be extradited, (2) to be evidence that the demanding state intended to proceed in good faith to a final determination on the extradition proceedings.

The Supreme Court of Illinois, in its opinion, states that the statute in this respect does not apply because the agent of the demanding state could not receive the

relator until the proceedings for a writ of *habeas corpus* were concluded. The statute does not say that the agent must appear within thirty days to receive the fugitive, it specifically states that an agent from the demanding state appear within thirty days of his arrest. The statute required the presence of the agent to prevent indefinite incarceration of the fugitive and to show good faith of the authorities of the demanding state in bringing the proceedings.

The Supreme Court of Illinois in its opinion holds that the filing of a petition for a writ of *habeas corpus* caused the delay in the appearance of the agent, and therefore the relator cannot avail himself of the provisions of the statute. The relator had the constitutional right to file a petition for a writ of *habeas corpus*. Article II, Section 7 of the Constitution of Illinois. The exercise of his constitutional right to file a writ of *habeas corpus* did not suspend the operation of the statute requiring that the agent of the demanding state appear within 30 days of the arrest.

The Supreme Court of Illinois in its opinion cites two cases that we respectfully submit are not in point with our present case. In *People ex rel Poncher* v. *O'Brien*, 374 Ill. 586, the record showed the agent named in the warrant appeared ready to receive him immediately after his arrest. In *People ex rel DeBardas*, v. *Toman*, the relator was arrested on July 23, 1935. The cause came up for hearing on the fugitive warrant on August 9, at which time the messenger was present.

It is therefore respectfully submitted that the demanding state did not comply with the Federal extradition statute in the failure of the agent to appear within thirty days of the arrest of the fugitive and the relator should be discharged.

VII.

CONCLUSION.

It is therefore respectfully submitted that this cause is one calling for the exercise by this Court of its supervisory powers, granting its writ of certiorari to review the judgment of the Supreme Court of Illinois and to thereafter reverse the same.

Respectfully submitted,

THOMAS F. DOLAN
of Chicago, Illinois
Attorney for the Petitioner